

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Petition for Waiver of Smith Bagley, Inc.)	

**COMMENTS OF SACRED WIND COMMUNICATIONS, INC.
IN OPPOSITION TO PETITION FOR WAIVER**

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Sacred Wind Communications, Inc. (“Sacred Wind”), by its undersigned attorneys, hereby files these comments in opposition to the Petition of Smith Bagley, Inc. (“SBI”) for a limited waiver for competitive eligible telecommunication carriers (“ETCs”) in the Eastern Navajo Agency in New Mexico, of the interim cap that the Commission imposed on the amount of universal service high-cost support that competitive ETCs may receive.¹

INTRODUCTION AND SUMMARY

SBI seeks a waiver of the high-cost interim cap to enable SBI and other competitive ETCs to obtain uncapped high-cost support, purportedly to provide or expand telecommunications services to locations in the Eastern Navajo Agency in the state of New Mexico that are outside the Navajo Reservation, and as such are not “Covered Locations” that

¹ Smith Bagley, Inc., High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Petition for Waiver, WC Docket No. 05-337 (filed Dec. 14, 2009) (“Petition”); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Order, 23 FCC Rcd 8834 (2008) (“*Interim Cap Order*”), petition for review denied, *Rural Cellular Ass’n v. FCC*, 588 F.3d 1095 (D.C. Cir. 2009).

are subject to an exception to the *Interim Cap Order*.² The supposed basis for the Petition is that through the receipt of uncapped support, SBI and other competitive ETCs will be able to build out and provide mobile wireless services to vast swaths of the 5,200 square mile, historically underserved and impoverished Eastern Agency, thereby bringing telephone and broadband services to the Navajo people.³

What SBI fails to tell the Commission is that a significant portion of the Eastern Agency is within the service territory of Sacred Wind, an incumbent ETC that is deploying an innovative Fixed Wireless Local Loop (“FWLL”) access network, and is, *in fact*, bringing telephone and broadband services to thousands of Navajo homes in the Eastern Agency over the next two years. Sacred Wind serves approximately 62% of the Eastern Agency, which includes almost 75% of the homes in the Agency.⁴ By the end of 2012, it expects to be serving over 90% of households in its service territory, which include almost 70% of the households in the Eastern Agency.

In contrast, SBI has been in the Eastern Agency since 2005, has had five years to build out facilities throughout the Eastern Agency, and has had three years to seek uncapped support to deploy facilities in the non-Reservation portion of the Eastern Agency before the *Interim Cap Order* even went into effect, yet curiously failed to do so. What is different now is the presence Sacred Wind, a new incumbent local exchange carrier (“ILEC”) in the market that is deploying an innovative FWLL system, and that has relatively high per-line costs and associated per line support.⁵

² *Interim Cap Order*, ¶¶ 32-33.

³ *See Petition* at 4, 10-11.

⁴ A map of Sacred Wind’s service territory relative to the Eastern Agency is Attachment 1, hereto.

⁵ Indeed, according to USAC reports, Sacred Wind’s per line support, based on the actual cost of deploying its FWLL network, is \$189.66. In contrast, SBI is receiving, on average, per line support of \$16.07, which includes uncapped support it is receiving for service in certain Covered Locations in New Mexico. *See* Attachment 2, hereto.

While SBI claims the purpose of the waiver petition would be to facilitate its deployment of facilities throughout the Eastern Territory, that claim is belied by its stated plan *to deploy four sites in a 5,200 square mile area*.⁶ What is clear, moreover, is that if the cap were waived, under the “identical support rule”⁷ SBI would take the same per-line support as Sacred Wind, providing SBI with a huge windfall and subsidy significantly in excess of its costs. This would be contrary to the reasoned logic and fundamental basis of the *Interim Cap Order*, which was recently affirmed by the D.C. Circuit Court of Appeals in strong unambiguous terms.⁸

As will be shown below, SBI provides no basis for the Commission to conclude that waiver of the interim cap makes sense here or that doing so would in any manner lead to significant deployment in the Eastern Agency by SBI or other competitive ETCs to the benefit of the Navajo people. The Covered Locations exception presumed low penetration areas that were largely unbuilt, while here Sacred Wind’s facilities will have the ability to serve some 75% of households in the Eastern Agency. Thus, at most, the availability of uncapped support would allow SBI to provide mobile wireless services that are complementary to Sacred Wind’s, or cherry pick Sacred Wind customers using high-cost support that significantly exceeds SBI’s costs, which would be contrary to one of the fundamental bases underlying the Covered Locations exception to the *Interim Cap Order*. At bottom, there is no basis for the waiver that SBI seeks, the grant of such waiver would be contrary to the public interest, and SBI’s petition should be denied.

Thus through this Petition, SBI is seeking an over ten-fold increase in its per-line support for its admittedly limited deployments in the Eastern Agency.

⁶ *Petition* at 7-8.

⁷ *See* 47 C.F.R. § 53.307(a).

⁸ *See Rural Cellular Ass’n v. FCC*, 588 F.3d 1095 (D.C. Cir. 2009)(“RCA”).

BACKGROUND

A. SBI and Its Petition

SBI is a commercial mobile wireless provider operating in portions of New Mexico, and has been designated as a competitive ETC in the state. According to its Petition, it holds licenses to provide commercial mobile wireless services in New Mexico, including “substantial portions of the Eastern Navajo Agency.”⁹

SBI seeks the waiver to enable it and other competitive ETCs to use uncapped high-cost support to serve residents in the Eastern Navajo Agency. In the *Interim Cap Order*, the Commission capped high-cost support, but allowed two exceptions: First, to the extent that a competitive ETC files cost data demonstrating that its costs meet the support threshold in the same manner as the ILEC;¹⁰ second, for competitive ETCs that serve tribal lands or Alaska Native regions (“Covered Locations”), defined as “any federally recognized Indian tribe’s reservation, pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat 688) and Indian allotments.”¹¹ Because the Eastern Navajo Agency is not within the Navajo Reservation, SBI and other competitive ETCs would require a waiver of the *Interim Cap Order* in order to receive uncapped support in the Eastern Navajo Agency.

SBI claims that the waiver is warranted to enable SBI to expand and to continue providing services that are “urgently needed” by subscribers residing in the Eastern Navajo Agency, and to provide incentives for other competitive carriers to do so.¹² SBI claims that the

⁹ *Petition* at 2.

¹⁰ *Interim Cap Order*, ¶ 31.

¹¹ *Id.* at ¶ 32, & n.95.

¹² *Petition* at 4.

provision of uncapped support is needed to accelerate infrastructure investment and increase service availability in the Eastern Navajo Agency, arguing that consumers do not have sufficient access to telephone service, and in particular, high-quality mobile wireless services. SBI itself received a waiver in 2005 to the stay on enhanced Lifeline and Linkup support in near reservation lands for the provision of obtaining such support in the Eastern Agency, and believes that while subscribership levels have improved, there is no evidence suggesting that telephone penetration levels are approaching the levels for Tribal lands generally.¹³ SBI posits that “a big reason for low penetration is the lack of access to commercial mobile wireless services that can only be remedied by the construction of new cell sites” and that the availability of uncapped support “will accelerate infrastructure investment in the Eastern Agency.”¹⁴ SBI goes on to say that it has plans to construct at least four sites in the near term in the Eastern Agency, but does not provide the location of those sites, citing confidentiality concerns, and asserts that with uncapped support, SBI will be able to accelerate construction of new cell sites in these and other areas. SBI also notes that its sites will be 3G-ready on day one, so that the deployment of its facilities will also increase access to broadband services in the Eastern Agency.

SBI also believes that extending the Covered Locations exception to the Eastern Agency would be consistent with the *Interim Cap Order* in several respects. It notes that the demographics and other characteristics of the Eastern Agency, as well as its low telephone penetration are comparable to those of other Navajo Nation lands that are subject to the *Interim Cap Order* exception.¹⁵ It also argues that the receipt of uncapped support, consistent with the policies underlying the *Interim Cap Order*, will enhance the ability of SBI and other competitive

¹³ *Id.* at 7.

¹⁴ *Id.*

¹⁵ *Id.* at 9.

ETCs to provide service to new subscribers in the Eastern Agency. In this regard, SBI asserts that it is currently using high-cost support to construct new facilities through the Navajo Reservation, including in the Eastern Agency, and the provision of uncapped support will provide additional funds that can be used to build new cell sites in the Eastern Agency.¹⁶

B. Sacred Wind

Sacred Wind is an ILEC and ETC in the State of New Mexico that is bringing voice and broadband services to the many thousands of unserved and underserved homes on Reservation and near-Reservation lands in the Eastern Agency and adjacent areas, and providing the most advanced services to Navajo and non-Navajo residents, governmental entities, and businesses in its territory.¹⁷ Formed in 2004, Sacred Wind completed an acquisition in 2006 of a portion of Qwest's service territory in northwestern New Mexico on the Navajo Reservation and near-Reservation lands in the Eastern Agency known as the "checkerboard," as well as limited Qwest copper loop facilities in this territory.¹⁸ The company's 3,600 square mile service territory includes 3,200 square miles (or approximately 62% of the Eastern Agency's 5,200 square miles),¹⁹ comprising some 8,400 of 11,500 Eastern Agency households – about 75% of the households in the Eastern Agency.

¹⁶ *Id.* at 10-11.

¹⁷ Sacred Wind serves a population of approximately 27,000, 96% of whom are Navajo citizens. The population density of its service territory is about 8.5 people per mile. 60% of the population in its service territory is below the national poverty level, and the Navajo population at large is among the highest at risk in the nation for school dropout, teen pregnancy, infant mortality, teen suicide, and diabetes. Additionally, within Sacred Wind's service territory are located approximately 6,500 Navajo households without access to any home-based telephone service whatsoever, representing a telephone penetration rate of less than 30% when Sacred Wind commenced service. For example, in one 600 square mile area of Sacred Wind's service territory now being prepared for deployment, 104 homes have been located – none of them served. Broadband penetration in the area remains at less than 3%.

¹⁸ This area is so named because of the checkerboard areas of private and government-owned parcels within or near the overall boundary of the Navajo Nation.

¹⁹ See Attachment 1 for a map of Sacred Wind's service area relative to the Eastern Agency.

Sacred Wind commenced operations in December 2006. Since that time, it has identified and mapped nearly every unserved home within its territory using GPS technology, and actually reported a lower telephone penetration rate than earlier believed.²⁰

To meet this area's unique telecommunications needs, Sacred Wind is utilizing a \$70 million Rural Utilities Service ("RUS") loan to deploy a highly reliable 3.65 GHz FWLL network over a WiMAX platform as an alternative to a copper access network telecommunications solution. Traditional copper plant is virtually impossible to widely deploy in Sacred Wind's service territory given low population density (approximately 8 persons per mile), the rugged, rocky topography of the Eastern Agency, and challenges in efficiently securing necessary rights of way on tribal lands to lay copper plant. Sacred Wind's FWLL system replaces the typical copper, twisted pair distribution system with a point-to-multipoint radio access network operating on a 3.65 GHz WiMAX platform,²¹ combined with a hybrid fiber/wireless backbone transmission network to bring all of the subscribers in the Sacred Wind network to its central office locations.²²

²⁰ This entailed driving the company's territory, locating every household or hogan, and entering its coordinates in a mapping database. It is not atypical for Navajo households to be located other than on a marked street and to have no fixed street address.

²¹ Under this deployment, each radio-fed customer has at their premises a pole mounted antenna, a 3.65 GHz transceiver and battery backup to maintain service in the event of a commercial power outage. The typical customer deployment to a Navajo hogan, which provides voice and broadband service, is shown in Attachment 3. Subscribers also have the equivalent of a Network Interface Device ("NID") to establish a demarcation point between Sacred Wind's network and customer inside wiring. This NID has a modular RJ11 telephone receptacle to allow a standard analog telephone to be inserted in an identical fashion to wired networks. Use of this telephone system from a subscriber perspective is identical to any landline system. Standard commercially available telephone handsets utilize inside wiring and telephone jacks.

²² Sacred Wind is using an Ethernet/Internet Protocol ("IP") method of transmission for its entire network, including its last mile, fixed wireless local loop using WiMAX IEEE 802.16 equipment. WiMAX has one of the highest spectral efficiencies available, making it well suited for use in the 3.65 GHz band, and is a non-line-of-sight technology that is more tolerant than other technologies of physical interference that could otherwise block or reflect wireless signals. The use of WiMAX technology and the managed nature of IP transmission throughout the Sacred Wind network is intended to provide subscribers with wireline quality of service for both voice telephony as well as for broadband Internet access.

Sacred Wind has completed a field test of its FWLL system, and has added its first fixed wireless subscribers from a single communications tower located at its headquarters site. It has also just completed its fixed wireless infrastructure, comprised of 15 backbone communications towers, and will begin mass expansion of its WiMax fixed wireless services to unserved Navajo homes in 2010, serving no less than 1,000 new homes in 2010, and double that in each of 2011 and 2012. Sacred Wind plans to fully deploy its network by December 2012, at which point it expects to serve approximately 8,000 of the 8,400 Eastern Agency households in its service area.

In 2006 and 2008, the Commission granted waivers to Sacred Wind to enable Sacred Wind to timely receive USF support, based on its actual costs, in order to enhance basic and advanced communications services Sacred Wind's territory.²³ Since 2006, Sacred Wind has drawn down over \$31 million of its RUS loan, and will borrow the remainder of its \$70 million loan for community-by-community, household-by-household expansion of basic and broadband facilities between 2010 and 2012.

DISCUSSION

A. Through its Petition, SBI Seeks a Return to the "Wretched Excess" that the Commission Sought to Eliminate Through The *Interim Cap Order*, and Should be Summarily Denied for This Reason Alone.

As the Commission is painfully aware, while ILECs, such as Sacred Wind, receive high-cost support based on their actual costs of providing service, under the "identical support rule," competitive ETCs, mainly wireless providers such as SBI, historically received support for each

²³ *Sacred Wind Communications, Inc. and Qwest Corporation, Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules; Sacred Wind Communications, Inc., Related Waivers of Parts 36, 54, and 69 of the Communication's [sic] Rules*, Order, 23 FCC Rcd 12917 (Wireline Comp. Bur. 2008); *Sacred Wind Communications, Inc. and Qwest Corporation, Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules; Sacred Wind Communications, Inc., Related Waivers of Parts 36, 54, and 69 of the Communication's [sic] Rules*, Order, 21 FCC Rcd 9227 (Wireline Comp. Bur. 2006).

line based not on their own costs, but rather on the same per-line support as that received by the ILECs in the relevant service area.²⁴ As a result, under the identical support rule, competitive ETCs obtained funding that significantly exceeded their actual costs of deployment – an outcome which SBI no doubt seeks here.²⁵ As the D.C. Circuit Court of Appeals recognized in flatly rejecting the Rural Carriers Association challenge to the *Interim Cap Order*, through that order the Commission sought to reign in this “wretched excess” in the face of evidence showing that competitive ETCs were receiving subsidies grossly in excess of what was needed to allow them to remain in the market.²⁶

That is, of course, clearly what is going on here. SBI cloaks its requests amid laudable goals – that the waiver is necessary so that it can get high-cost funding necessary to build out the unserved, economically depressed Eastern Agency – but nowhere does it show that the level of capped high-cost support is insufficient to cover its costs. This is the exact same problem that the rural wireless carriers faced before the Commission as well as in the Court of Appeals – an utter failure to show that the level of support under the cap would be insufficient to meet the support threshold based on their own costs, which are significantly below those of wireline providers.²⁷

²⁴ See 47 C.F.R. § 53.307(a); *RCA*, 588 F.3d at 1099.

²⁵ In adopting the Interim Cap, the Commission found that the significant growth in high-cost support in the years leading up to the cap (from \$2.6 billion in 2001 to \$4.3 billion in 2007) had been due to increased support provided to competitive ETCs, which under the identical support rule received high-cost support based on the per-line support that ILECs receive, rather than on the competitive ETCs own costs. *Interim Cap Order*, ¶ 6.

²⁶ *RCA*, 588 F.3d at 1102-1103. In a pending Notice of Proposed Rulemaking, the Commission proposes eliminating the identical support rule for competitive ETCs, which, according to the Commission “bears no relationship to the amount of money such competitive ETCs have invested in rural and other high-cost areas of the country.” *In the Matter of High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, 23 FCC Rcd 1467, ¶ 5 (2008)(“*Identical Support Notice*”).

²⁷ See *RCA*, 588 F.3d at 1104 (noting that “there is no reason to believe—and petitioners have offered no data providing—that support under the cap will be insufficient”); *Interim Cap Order*, ¶ 14 (because competitive ETC support is based on the ILEC’s costs, rather than on the competitive ETC’s own costs, “there is no reason to believe

Indeed, here there is no need for a waiver at all. Under the *Interim Cap Order*, a competitive ETC will not be subject to the cap if it submits its own costs. Specifically, to the extent SBI believes it should be entitled to greater per line high-cost support than the amount disbursed under the cap, the *Interim Cap Order* permits it to file cost data demonstrating that its costs meet the support threshold in the same manner as the ILEC.²⁸ If it refuses to or is unable to do so, it can hardly complain that the level of support is below that of the ILEC.²⁹ Thus, before even entertaining a waiver to allow SBI to opt into the Cover Locations exception, the Commission should first put SBI to its proof, and explicitly require that it show, as contemplated by the *Interim Cap Order*, that the level of support under the cap would be insufficient, and what the appropriate level of support would be.³⁰ Instead, basing support here on incumbent ETC's costs would be a great leap back towards the "wretched excess" of the past that the Commission took great pains to correct in the *Interim Cap Order*.

Moreover, that "wretched excess" would be further exacerbated here, since the incumbent ETC, Sacred Wind, by virtue of construction of its FWLL network, has per-line costs and per-line support that exceed the three other ILECs providing services to various portions of Navajo lands, as well as the per-line support currently received by SBI, including for uncapped

– and no record data showing – that support subject to an interim cap would necessarily result in insufficient support levels”).

²⁸ *Interim Cap Order*, ¶ 31; *RCA*, 588 F.3d at 1104.

²⁹ *RCA*, 588 F.3d at 1104.

³⁰ Indeed, since SBI's construction costs and operational costs do not include the middle mile fixed wireless tower and monopole system needed to reach into unserved Navajo communities, and the subscriber antenna and inside wire and modem equipment needed to ensure a sound IP signal to each home capable of carrying voice and broadband traffic, as SWC's system includes, the Commission should rightfully ask what exactly are SBI's USF needs to serve the Eastern Agency, and how Sacred Wind's costs and support could be an appropriate surrogate for SBI's under any set of circumstances.

support received by SBI for service in Covered Locations in New Mexico.³¹ Thus, if the Petition were granted and SBI were to step into Sacred Wind's shoes, its level of support to build a mobile wireless network would reach absurd proportions. This perhaps explains why SBI is only now coming to the Commission seeking uncapped high-cost support in the Eastern Agency, when it has been serving the area since at least 2005 – three years before adoption of the *Interim Cap Order*; in essence, it has identified a potential bonanza too good to pass up.

B. SBI's Petition is Inconsistent with a Fundamental Underpinning of the Covered Locations Exception, and Would Also Read Out of the Exception the Exclusion of Near Reservation Lands.

A further reason that the Petition should be denied is that it is inconsistent with one of the fundamental assumptions underlying the Covered Locations exception. Specifically, as SBI acknowledges in its Petition,³² by creating the exception to the high-cost cap for Covered Locations, the Commission assumed that competitive ETCs in these areas would not merely be providing services that are complementary to those already available to consumers from other providers.³³ Here, however, that is exactly what SBI seeks to do through its request for above-cost USF support. Such support, if granted, would subsidize SBI's provision of commercial mobile wireless services in the Eastern Agency, a territory where Sacred Wind is building out facilities covering 62% of the territory that which will reach almost 75% of Eastern Agency households.

³¹ See Attachment 2, hereto, showing that were SBI to take Sacred Wind's level of support in the Eastern Agency, SBI would increase by over tenfold its per-line level of support for service in the Eastern Agency compared with its service in other areas of New Mexico, including in Covered Lands that are not subject to the cap.

³² *Petition* at 8.

³³ *High Cost Universal Service Support, Federal-State Joint Board on Universal Service*, Order, 24 FCC Rcd 3369, ¶ 4 (2009); *Interim Cap Order*, ¶¶ 19-21 (Typically, "wireless CETCs do not capture lines from the ILEC to become a customer's sole service provider, except in a small portion of households. Thus, rather than providing a complete substitute for traditional wireline service, these wireless CETC largely provide mobile services in addition to a customers existing wireline service, which has created a number of serious problems for the high-cost fund.").

Sacred Wind, of course, takes no exception to SBI's description of the Eastern Agency, in terms of its depressed economic conditions, extremely low telephone and broadband penetration, significant deployment challenges, and the need for the Commission to promote deployment.³⁴ But those observations apply equally to the other two Navajo agencies in New Mexico – the Shiprock Agency and the Ft. Defiance Agency, which together with the Eastern Agency include all of the 52 New Mexico Navajo chapters. In other words, if SBI's waiver is granted here, the Commission might as well read out of the Covered Locations exception the exclusion of near-Reservation lands. The Commission should see through the real reason here for SBI's focus on the Eastern Agency, which is to allow SBI to take advantage of Sacred Wind's level of support, which provides SBI even more of a windfall than support based on ILEC support from other areas.

C. There is No Reasoned Basis to Believe that Providing SBI with Access to Uncapped High-Cost Support Would Lead to Significant New Deployment in the Eastern Agency or Significant Increases in Telephone Penetration in Historically Unserved Areas.

SBI's argument that "a big reason for low penetration rates is the lack of access to commercial mobile wireless services" and that "allowing competitive ETCs to receive uncapped support will accelerate infrastructure investment in the Eastern Agency"³⁵ simply strains credulity. The Eastern Agency is comprised of some 5,200 square miles, and SBI asserts that it is proposing the construction of "at least four new sites" to serve areas in the Eastern Agency – that is, four new sites to serve 11,500 households spread across 5,200 square miles.³⁶ It is absurd to suggest that this level of deployment will have any meaningful impact whatsoever on

³⁴ See *supra*, at 6-7, & n.17.

³⁵ See *Petition* at 7.

³⁶ *Chapter Images: 2004*, at 387 (Division of Community Development, Navajo Nation, 2004).

penetration in the Eastern Agency, or should provide any basis for the wholesale expansion of the Covered Locations exception that SBI seeks. In addition, while SBI refuses to provide any information on the location of its sites, citing confidentiality and competitive purposes, if past is prologue, one would expect those sites to be placed along major highways and major population centers, as opposed to interior locations where they could truly be used to provide residential service to presently unserved Navajo consumers.³⁷

This is precisely one of the concerns expressed by the Commission in capping support for all but Covered Locations, as narrowly defined. In particular, under the identical support rule, “the competitive ETC has little incentive to invest in, or expand, its own facilities in areas with low population densities Instead, competitive ETCs have a greater incentive to expand the number of subscribers, particularly those located in the lower-cost parts of high-cost areas, rather than to expand the geographic scope of their network.”³⁸ Thus, while SBI would have the Commission believe that elimination of the high-cost cap would lead to significant new deployment by SBI and other competitive carriers in vast swaths of the Eastern Agency that have been historically unserved, logic, history, and the Commission’s own predictive judgment indicate just how unlikely that is to occur.

³⁷ See Attachment 4, hereto, showing SBI New Mexico deployments as of 2005 and 2007. Moreover, it is Sacred Wind’s experience that wireless carriers in this general area have built wireless facilities to serve the tens of thousands of customers traveling daily over Interstate 40 and State Road 550, as well as the thousands of customers who live in Gallup, Grants, Bloomfield and Farmington, New Mexico, but not specifically to serve the more remote Navajo households in the interior portions of the Eastern Agency.

³⁸ See *Interim Cap Order*, ¶ 21; *RCA*, 588 F.3d at 1104. Removing these incentives was a further reason underlying the Commission’s proposal to eliminate the identical support rule and instead require competitive ETCs to receive high-cost support based on their own costs. See *Identical Support Notice*, ¶ 5 (tentatively concluding that a competitive ETC should receive high-cost support based on its own costs, “which better reflect real investment in rural and other high-cost areas of the country, and which creates greater incentives for investment in such areas”).

CONCLUSION

At bottom, SBI has failed to provide a single compelling reason that would justify its requested waiver of the *Interim Cap Order* or that such a waiver would be in the public interest, let alone the compelling reasons for waiver required by Commission jurisprudence.

Accordingly, for all the foregoing reasons, Sacred Wind respectfully requests that the Petition be denied.

Respectfully submitted,

SACRED WIND COMMUNICATIONS, INC.

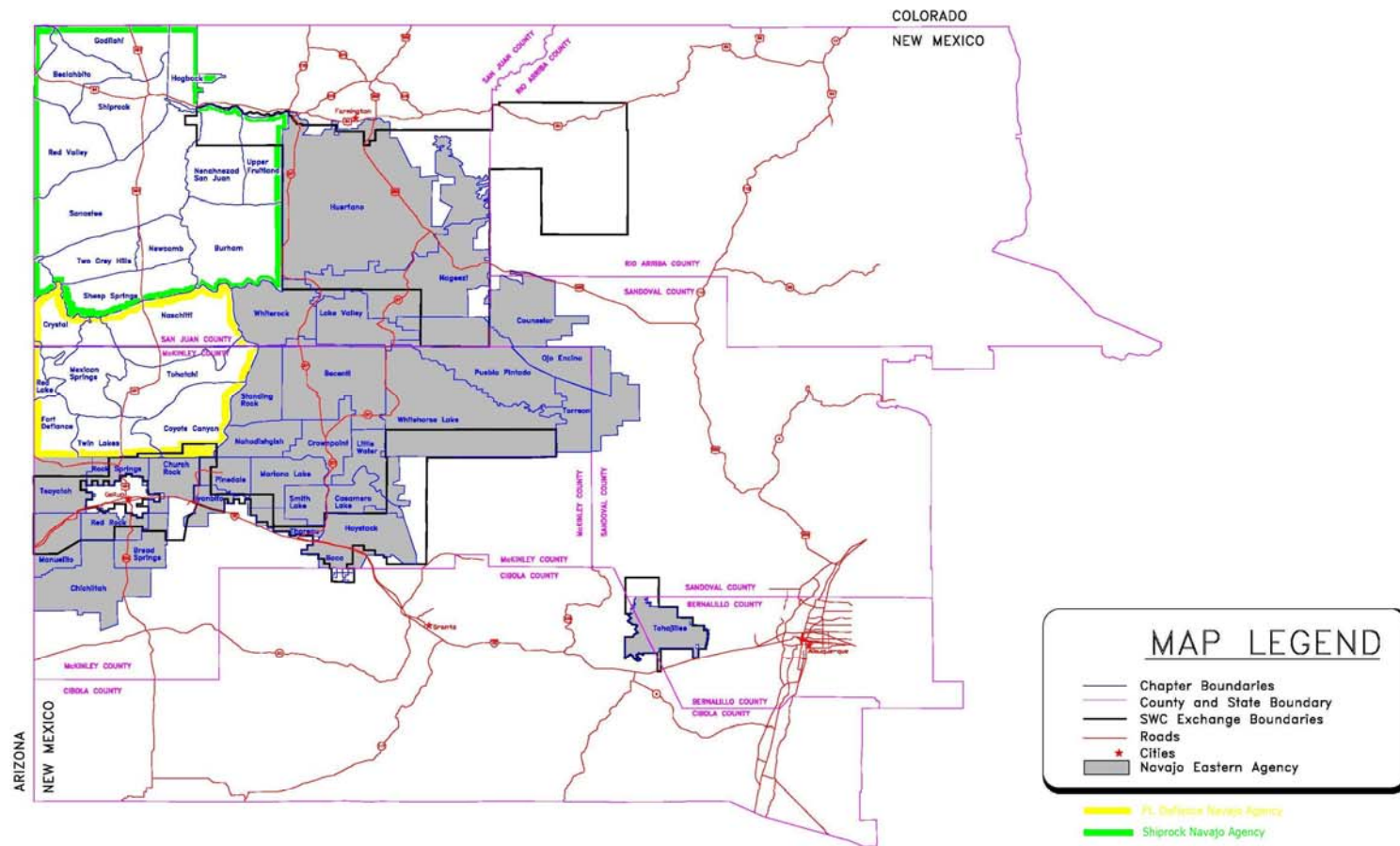
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Dated: February 11, 2010

ATTACHMENT 1

Sacred Wind Communications Exchange Map



Attachment 2

Monthly Per-Line High-Cost Support -- New Mexico

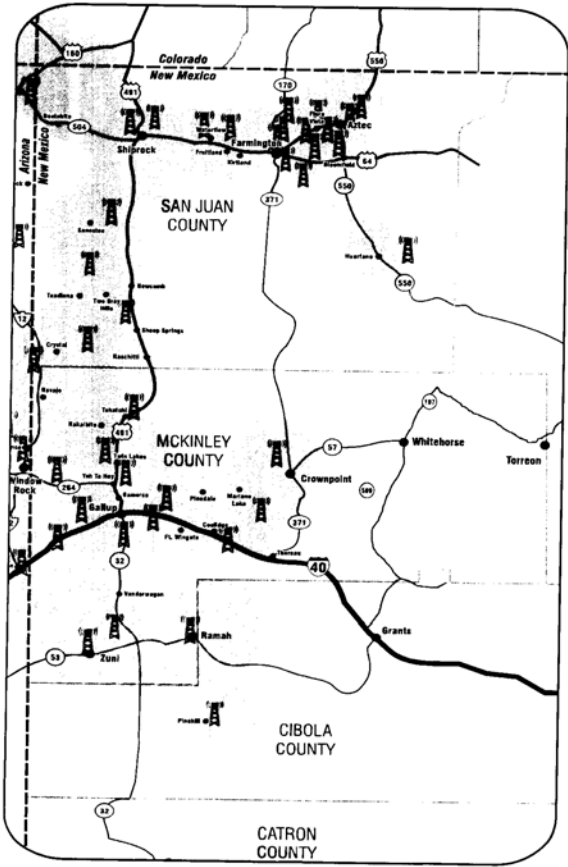
Sacred Wind Communications	\$189.66
Smith Bagley SA 499001	\$16.56
Smith Bagley SA 499009 - CL	\$15.98
Average Smith Bagley	\$16.07

CL=Covered Lands

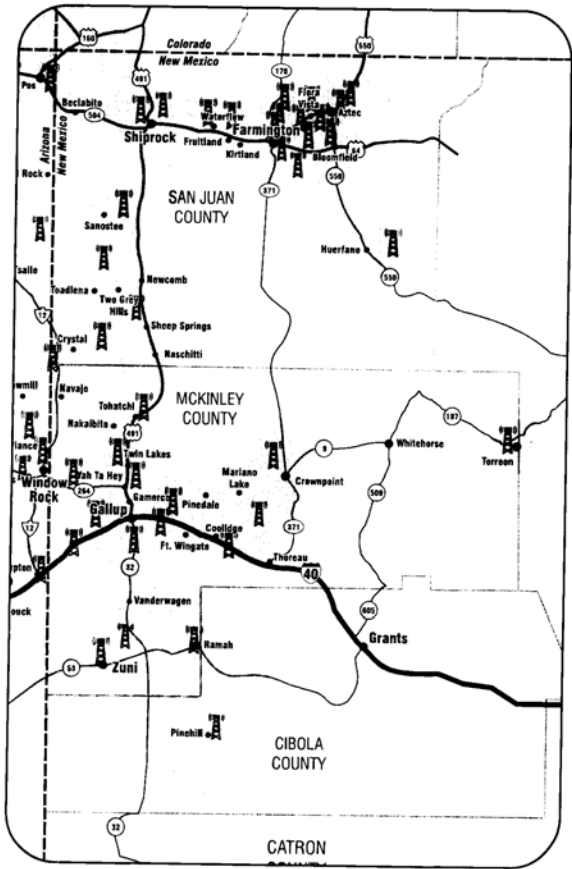
Source: USAC



New Mexico Cellular Coverage



Dec 2006



Dec 2007

- Digital Coverage ○ Digital & Analog Coverage ○ Analog Coverage

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of February, 2010 a copy of the foregoing Comments of Sacred Wind Communications, Inc. in Opposition to Petition for Waiver was served via First Class Mail, postage prepaid, on each of the persons listed on the attached service list.

/s/ *Peter W. Denton*
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